

STATE OF INDIANA

COUNTY OF LAKE

STATE OF INDIANA,

Plaintiff,

v.

BRIAN SCOTT WALLACE,

Defendant.

) IN THE LAKE CIRCUIT/SUPERIOR COURT
) SS:
) CAUSE NO. 45C010403PL00068

FILED IN

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WILLIAM B. PHILPOT
LAKE CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. The Defendant, Brian Scott Wallace, is an individual engaged in the home improvement business, with a principal place of business located at 3421 Ridge Road, Highland, IN 46322, and transacts business with Indiana consumers.

FACTS

3. Since at least April 19, 2003, the Defendant has entered into home improvement contracts with Indiana consumers.

A. Allegation Regarding Margaret Boyan

4. On or about April 19, 2003, the Defendant entered into a contract with Margaret Boyan ("Boyan") of Hammond, Indiana, wherein the Defendant represented that he would install a new entry door for Boyan's garage, install a chain link fence, paint an awning, install a new picnic table seat board, and remove a stump at a price of Six Hundred and Forty Dollars (\$640.00). A true and accurate copy of the Defendant's contract with Boyan is attached and incorporated as Exhibit "A."

5. Boyan paid the Defendant Three Hundred and Twenty Dollars (\$320.00) at contract formation, based on the Defendant's representations that the money was necessary for the purchase of materials to perform the contracted work.

6. Shortly after the Defendant began work, Boyan paid the Defendant an additional One-Hundred Dollars (\$100.00), so that the Defendant could pay an employee.

7. The Defendant failed to provide Boyan with a written home improvement contract that contained:

- a. any time limitations on the consumer's acceptance of the home improvement contract;
- b. the approximate starting and completion dates of the home improvements; and

- c. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

8. The Defendant failed to obtain the necessary license and/or permit(s) for the work under the home improvement contract, as required by the Hammond Building Department.

9. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented to Boyan at the time the contract was formed that the work would be completed within a reasonable period of time.

10. Although the Defendant began the work, the Defendant has yet to complete the work under the home improvement contract, or to issue a refund to Boyan.

B. Allegations Regarding Sarah Boyajian

11. On or around April 23, 2003, the Defendant entered into a contract with Sarah Boyajian ("Boyajian") of Hammond, Indiana, wherein the Defendant represented that he would install a concrete driveway at a price of Five-Hundred and Fifty Dollars (\$550.00). A true and accurate copy of the Defendant's contract with Boyajian is attached and incorporated by reference as Exhibit "B."

12. Boyan paid the Defendant Three Hundred Dollars (\$300.00) at contract formation, based on the Defendant's representations that the money was necessary for the purchase of materials to perform the contracted work.

13. The Defendant failed to provide the consumer with a written home improvement contract that contained:

- a. any time limitation on the consumer's acceptance of the home improvement contract; and
- b. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

14. The Defendant failed to obtain the necessary license and/or permit(s) for the work under the home improvement contract, as required by the Hammond Building Department.

15. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented to Boyajian at the time the contract was formed that the work would be completed within a reasonable period of time.

16. The Defendant has yet to start and; therefore, has not completed any work under the home improvement contract, nor has the Defendant provided a refund to Boyajian.

C. Allegations Regarding Beverly Elliott

17. On or around June 5, 2003, the Defendant entered into a contract with Beverly Elliott ("Elliott") of Griffith, Indiana wherein the Defendant represented that he would install a deck with handrails and gutter guards at a price of Two Thousand Dollars (\$2000.00). A true and accurate copy of the Defendant's contract with Elliott is attached and incorporated by reference as Exhibit "C."

18. Elliot paid the Defendant One Thousand Dollars (\$1,000.00) at contract formation, based on the Defendant's representations that the money was necessary for the purchase of materials to perform the contracted work.

19. On or about June 11, 2003, Elliot paid the Defendant Five Hundred and Twenty-Five Dollars (\$525.00), based on the Defendant's representations that the additional money was necessary for the purchase of materials to perform the contracted work.

20. The Defendant failed to provide the consumer with a written home improvement contract that contained:

- a. any time limitations on the consumer's acceptance of the home improvement contract;
- b. the approximate starting and completion dates of the home improvements; and
- c. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

21. The Defendant failed to obtain the necessary license and/or permit(s) for the work under the home improvement contract, as required by the Griffith Building Commissioner.

22. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented to Elliott at the time the contract was formed that the work would be completed within a reasonable period of time.

23. The Defendant has yet to start and; therefore, has not completed any work under the home improvement contract, nor has the Defendant provided a refund to Elliott.

D. Allegations regarding Linda Pearson

24. On or around June 9, 2003, the Defendant entered into a contract with Linda Pearson ("Pearson") of Griffith, Indiana wherein the Defendant represented that he would install a deck with handrails and gutter guards at a price of One Thousand Four Hundred and Fifty Dollars (\$1,450.00). A true and accurate copy of the Defendant's contract with Pearson is attached and incorporated by reference as Exhibit "D."

25. Pearson paid the Defendant Seven Hundred and Fifty Dollars (\$750.00) at contract formation, based on the Defendant's representations that the money was necessary for the purchase of materials to perform the contracted work.

26. The Defendant failed to provide the consumer with a written home improvement contract that contained:

- a. any time limitations on the consumer's acceptance of the home improvement contract;
- b. the approximate starting and completion dates of the home improvements; and
- c. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

27. The Defendant failed to obtain the necessary license and/or permit(s) for the work under the home improvement contract, as required by the Griffith Building Commissioner.

28. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented to Elliott at the time the contract was formed that the work would be completed within a reasonable period of time.

29. The Defendant has yet to start and; therefore, has not completed any work under the home improvement contract, nor has the Defendant provided a refund to Pearson.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

30. The services described in paragraphs 4, 11, 17 and 24 are "home improvements" as defined by Ind. Code § 24-5-11-3.

31. The transactions referred to in paragraphs 4, 11, 17 and 24 are "home improvement contracts" as defined by Ind. Code § 24-5-11-4.

32. The Defendant is a "supplier" as defined by Ind. Code § 24-5-11-6.

33. By failing to provide the consumers with a completed home improvement contract, containing the information referred to in paragraphs 7, 13, 20 and 26 the Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

34. The Defendant's violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 7, 13, 20 and 26, constitute a deceptive act and subjects Defendant to the remedies and penalties under Ind. Code § 24-5-0.5-1, *et seq.*

35. By failing to obtain the necessary license and/or permits prior to commencing any work, the Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-9.

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

36. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 35 above.

37. The transactions referred to in paragraphs 4, 11, 17, and 24 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

38. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

39. The violations of the Indiana Home Improvement Contracts Act referred to in paragraph 33 constitute deceptive acts in accordance with Ind. Code § 24-5-11-14.

40. The Defendant's representations to Boyan, Boyajian, Elliott and Pearson that the work would be performed, or that consumers would otherwise receive the represented benefits, as referred to in paragraph 5, 11, 12, 17, 18, 19, 24, and 25, when the Defendant knew or reasonably should have known that no such benefit would be received or work would be performed, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

41. The Defendant's representation to the Boyan, Boyajian, Elliott and Pearson that he would provide home improvement services on their homes within a reasonable period of time, when he knew or reasonably should have known that he would not, as referred to in paragraphs 9, 15, 22, and 28, are violations of Ind. Code § 24-5-0.5-3(a)(10).

42. By failing to obtain the necessary license and/or permits prior to commencing any work, as referred to in paragraphs 8, 14, 21, and 27, the Defendant violated Ind. Code § 24-5-0.5-10 (a)(1).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS
OF THE DECEPTIVE CONSUMER SALES ACT**

43. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 42 above.

44. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 8, 9, 11, 12, 14, 17, 18, 19, 21, 24, 25, 27, and 28 were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Brian Scott Wallace, enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:

- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;

- (4) A reasonably detailed description of the proposed home improvements;
 - (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
 - (6) The approximate starting and completion date of the home improvements;
 - (7) A statement of any contingencies that would materially change the approximate completion date;
 - (8) The home improvement contract price; and
 - (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

- c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
- d. representing, expressly or by implication, that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendant knows or should reasonably know it does not have;
- e. representing, expressly or by implication, that the Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendant knows or should reasonably know he cannot; and
- f. in the course of entering into home improvement transactions, failing to obtain the necessary license and permits, as required by law.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, Brian Scott Wallace, for the following relief:

- a. cancellation of the Defendant's contracts with consumers, including but not limited to Boyan, Boyajian, Elliott and Pearson, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution in an amount to be determined at trial, for money unlawfully received from consumers, including but not limited to Boyan, Boyajian, Elliott and Pearson, pursuant to Ind. Code § 24-5-0.5-4(c)(2);

c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

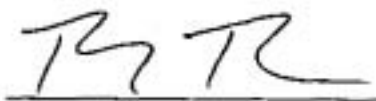
e. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. All other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:


Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300

BREAN SCOTT WALLACE

CALLS
MAY-12-JUNE 22- JY1-03
Twice A DAY

PROPOSAL

PROPOSAL SUBMITTED TO:

NAME MARY BOYAN

ADDRESS

CITY/STATE

PHONE NO.

WORK TO BE PERFORMED AT:

ADDRESS

CITY, STATE

DATE OF PLANS

ARCHITECT

PROPOSAL NO.

SHEET NO.

DATE April 19, 2003

We hereby propose to furnish the materials and perform the labor necessary for the completion of

We propose to install one new entry door to garage
Done is steel entry door with new frame.
We will install new chain link fence around garden
area with new gate. We will tear down old fence and replace
with 2x5" support with white vinyl. We will paint front awning
with paint supplied by customer. We will install new sign board
on picnic bench. We will install new wire clips on wires.
We will chop out stump. We will repair board fence
We will install new basket in vent.

320 Balance
100 Cash
220 Balance

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of:

Dollars (\$ 640)

with payments to be as follows:

320 Down Paid Check
320 upon completion

Any alteration in description from above specifications without written consent
will be considered only upon written order and will be subject to extra charge
over and above the estimate. No alterations or changes upon order
drawings, or plans beyond the above.

Respectfully submitted

Per

BREAN SCOTT WALLACE
Brian Scott Wallace

Note - This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

SIGNATURE

M. Boyan

SIGNATURE

DATE April 19, 2003

BY ARMY 8450

STATE'S
EXHIBIT

A

Brian Scott Wallace
 341 Ridge Rd.
 Highland Rds.
 838-1488 / (629-3973) / 616-5715

PROPOSAL

PROPOSAL NO.
SHEET NO.
DATE 6/5/03

PROPOSAL SUBMITTED TO:

WORK TO BE PERFORMED AT:

NAME Rev. J. T. Elliott	ADDRESS
ADDRESS	CITY, STATE
CITY, STATE	DATE OF PLANS SAME
PHONE NO.	ARCHITECT

We hereby propose to furnish the materials and perform the labor necessary for the completion of

We propose to INSTALL New White Vinyl Deck
 To Front Porch. Deck To EXTEND FROM GARAGE TO
 End of Porch. We propose to install New HAND RAIL
 Brown Kite Deck To MATCH Front Fence. We will
 install New Gutter Screens in All Gutters with
 1 YEAR GUARANTEE. All work is lifetime GUARANTEE 1 Year WORKMANSHIP
 MANUFACTURE WARRANTY IS TO BE GIVEN TO OWNER

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of:

with payments to be as follows: 100% Down 4/5/03 \$2500.00
 475.00 upon Completion. B. J. H. Wall
 Respectfully submitted
 For BRIAN SCOTT WALLACE

NOTE - This proposal may be withdrawn by us if not accepted within 10 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

SIGNATURE K. Brandy J. Elliott

DATE



BRYAN Scott, J. Wallace
3421 Ridge Rd.
Highland Ind. 46322
(838-1488) (629-3973)

PROPOSAL

PROPOSAL NO.	
SHEET NO.	
DATE	

PROPOSAL SUBMITTED TO:

WORK TO BE PERFORMED AT:

NAME <u>Mrs. Pearson</u>	ADDRESS <u>SAME</u>
ADDRESS	CITY, STATE
CITY, STATE	DATE OF PLANS
PHONE NO.	ARCHITECT

We hereby propose to furnish the materials and perform the labor necessary for the completion of

We propose to remove walls around the area.
We will then install new green baseboard.
We will then install new mirrors, two mirrored dress
cabinet shelves and shelves on each end.
We will install new shower pipe to be married to wall
and new faucet pipe.
We will install new almond faucet and shower head.
We will remove 2 front windows and replace
with white vinyl 2 lite sliders.
All ~~materials~~ materials are lifetime guaranteed.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of

Dollars 21450

with payments to be as follows

750 Down at Bid
700 upon Completion

Any alteration or addition from printed specifications, including extra work, shall not be considered until upon written order, and not necessary to make change and not allow the contractor. All payments to be made upon completion, and not before, or subject to be made.

Respectfully submitted

Brian Scott Wallace
Per Bryan Scott Wallace

Note: This proposal may be withdrawn by us if not accepted within _____ days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

SIGNATURE

Linda Pearson

SIGNATURE

DATE

JUNE 9, 2003

STATE'S
EXHIBIT

D